

EJK:DMP

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

- against -

JAMAL MCKAY,

Defendant.

AFFIDAVIT IN SUPPORT OF
REMOVAL TO THE MIDDLE
DISTRICT OF PENNSYLVANIA

(Fed. R. Crim. P. 5(c))

- - - - -X

EASTERN DISTRICT OF NEW YORK, SS:

JOHNNY O'BRIEN, being duly sworn, deposes and says that he is a Deputy United States Marshal with the United States Marshals Service, duly appointed according to law and acting as such.

Upon information and belief, on or about July 5, 2012, an arrest warrant was issued by the United States District Court for the Middle District of Pennsylvania, commanding the arrest of the defendant JAMAL MCKAY, for violating the terms and conditions of his pre-sentence release for failing to surrender to the U.S. Marshals Service as directed.

The source of your deponent's information and the grounds for his belief are as follows:

1. On June 11, 2012, the defendant JAMAL MCKAY pleaded guilty in the United States District Court for the Middle District of Pennsylvania to a charge of conspiracy to distribute and possess with intent to distribute in excess of 28 grams of cocaine base as well as additional quantities of cocaine, in violation of Title 21, United States Code, Sections 846,

841(a)(1), 841(b)(1)(B) and 841(b)(1)(C). Sentencing on this charge was scheduled for September 13, 2012.

2. Upon motion of the defendant, the court released the defendant JAMAL MCKAY from custody on June 19, 2012. One of the conditions of the defendant's release was that he surrender to the custody of the U.S. Marshals Service by 12 p.m. on Tuesday, July 3, 2012.

3. Counsel for the defendant JAMAL MCKAY filed a motion on July 2, 2012, to extend the defendant's pre-sentence release. That motion was denied on July 2, 2012.

4. The defendant JAMAL MCKAY failed to report on July 3, 2012, as directed by the court.

5. On July 5, 2012, an arrest warrant was issued by the United States District Court for the Middle District of Pennsylvania, commanding the arrest of the defendant JAMAL MCKAY, for violating the terms and conditions of his pre-sentence release for failing to surrender to the U.S. Marshals Service as directed. A copy of the arrest warrant, the court's order, and the government's motion for the arrest warrant are attached.

6. Prior to executing the warrant, members of the arrest team received biographical information and photographs of the defendant, including photographs of the defendant's tattoos, from law enforcement officers in the Middle District of Pennsylvania.

7. On August 5, 2012, an arrest team went to the home of JAMAL MCKAY's girlfriend at 1704 Ralph Avenue, Apartment 5E,

Brooklyn, New York, to execute the arrest warrant. Members of the arrest team knocked on the door and announced "Police." While the members of the arrest team could hear several individuals talking inside the apartment - including an adult male - prior to knocking, the apartment went quiet after they knocked on the door. After a number of minutes, MCKAY's girlfriend opened the door. The arrest team located two adult women and one child in the apartment.


8. Around this time, an NYPD unit responded to Apartment 4E - the apartment below JAMAL MCKAY's girlfriend's apartment - in response to a call about a possible burglary. The caller had reported that an individual was standing outside of Apartment 4E, on top of a window air conditioning unit. Members of the arrest team went downstairs to Apartment 4E to investigate as well, and located the defendant JAMAL MCKAY standing on the air conditioning unit. Members of the arrest team were eventually able to open part of the window and pull the defendant JAMAL MCKAY inside the apartment.

9. The defendant JAMAL MCKAY appeared to be the same individual as depicted in the photograph supplied by law enforcement officers in Pennsylvania. The tattoos observed on the MCKAY's body matched photographs of the tattoos from his arrest in Pennsylvania. In addition, MCKAY presented a Pennsylvania driver's license identifying him as JAMAL MCKAY with an address in Tobyhanna, Pennsylvania.

10. In addition, the defendant JAMAL MCKAY admitted that he was the person who was wanted in Pennsylvania. He stated that he knew that the request for an extension of his surrender date had been denied, that he was disappointed that it had been denied, and that he felt that he needed more time before surrendering.

11. It is the desire of the United States Attorney for the Middle District of Pennsylvania that the defendant JAMAL MCKAY be removed to that district for prosecution.

WHEREFORE, it is requested that the defendant JAMAL MCKAY be removed to the Middle District of Pennsylvania so that he may be dealt with according to law.



JOHNNY O'BRIEN
Deputy United States Marshal

Sworn to before me this
6th day of August, 2012

AO 442 (Rev. 5/93) Warrant for Arrest

UNITED STATES DISTRICT COURT

Middle

District of

Pennsylvania

UNITED STATES OF AMERICA

WARRANT FOR ARREST

V.

JAMAL MCKAY

Case Number:

3:11-CR-275

To: The United States Marshal
and any Authorized United States OfficerYOU ARE HEREBY COMMANDED to arrest JAMAL MCKAY
Name

and bring him or her forthwith to the nearest magistrate judge to answer a(n)

☐ Indictment ☐ Information ☐ Complain ☒ Order of court ☐ Violation ☐ Probation Violation Petition

charging him or her (brief description of offense)

VIOLATION OF PRESENTENCE RELEASE

in violation of 21 United States Code, Section(s) 846, 841JAMES M. MUNLEY

Name of Issuing Officer

JUDGE, US DISTRICT COURT

Title of Issuing Officer

Signature of Issuing Officer

7/5/12 at SCRANTON, PENNSYLVANIA

Date and Location

Bail fixed at \$10,000 by Deputy Clerk
Per Deputy Clerk Name of Judicial Officer

RETURN

This warrant was received and executed with the arrest of the above-named defendant

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

-vs-

JAMAL MCKAY

Defendant

3:CR-11-275

ORDER

The United States has filed motion a requesting this Court to issue an arrest warrant and to revoke the bail of the defendant, JAMAL MCKAY. The Government submits there is clear and convincing evidence to believe that the defendant has violated conditions of pre-sentence release and that the defendant is unlikely to abide by any further condition or combination of conditions.

Having reviewed the Motion for Arrest Warrant submitted by the United States in the above-captioned matter,

IT IS HEREBY ORDERED the defendant's pre-sentence release is revoked and that a Warrant for Arrest shall be issued and lodged as a detainer defendant, JAMAL MCKAY.

Dated: July 5, 2012


JAMES M. MUNLEY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

-vs-

JAMAL MCKAY

Defendant

3:CR-11-275

MOTION FOR ARREST WARRANT

The United States of America, by the United States Attorney for the Middle District of Pennsylvania, Peter J. Smith, and Assistant U.S. Attorney Robert J. O'Hara hereby moves this Court to issue an arrest warrant for the Defendant, JAMAL MCKAY. In support of this Motion, the United States asserts:

1. On June 11, 2012, the defendant, Jamal McKay, pled guilty to Count 1 of the Indictment, which charged him with conspiracy to distribute and possess with intent to distribute in excess of 28 grams of cocaine base ("crack") and additional quantities of cocaine, in violation of Title 21, United States Code, Sections 846, 841(a)(1), 841(b)(1)(B) and 841(b)(1)(c). Sentencing has been scheduled for September 13, 2012.

2. Upon motion of the defendant, the Court released MCKAY from custody on June 19, 2012. One of the conditions of defendant's release was that he surrender to the custody of the U.S. Marshals Service by 12:00 (noon) on Tuesday, July 3, 2012.

3. Counsel for The Defendant filed a Motion to extend his pre-sentence release, which this Court denied on July 2, 2012.

4. The defendant failed to report on July 3, 2012 as directed by the Court.

5. Given the unwillingness of JAMAL MCKAY to abide by conditions of his release while pending sentencing , it is submitted that a warrant be issued for his arrest and that he should be detained. Title 18, United States Code § 3148(b) states:

The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer -

(1) finds that there is -

- (A) probable cause to believe that the person has committed a federal, state or local crime while on release; or
- (B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that -

- (A) there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any person or the community; or
- (B) the person is unlikely to abide by any condition or combination of conditions of release.

6. It is respectfully submitted that the facts of this case and applicable law support this motion for revocation of Defendant's release.

7. The Government can establish there is clear and convincing evidence that the defendant has violated conditions of his release, as described in paragraph 4 above.

8. Based upon the defendant's demonstrated conduct in this case, he is unlikely to abide by any further condition or combination of conditions of his release.

9. In light of the above, the United States moves that the defendant's bail be revoked and a warrant for arrest be issued.

Respectfully submitted,

Date: July 5, 2012

/s/ Robert J. O'Hara
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